

PROPOSAL F2003-10 (Deferred Proposal F2002-11/F2001-13)

Existing regulation: Cook Inlet Area - Shellfish

No regulations presently.

Proposed regulation: Cook Inlet Area

COOK INLET AREA - Shellfish - No subsistence.

COOK INLET AREA - All shellfish - Residents of the Kenai Peninsula District.

The taking and use of shellfish during all periods of seasonal presence of such species is allowed by residents of the Kenai Peninsula District.

Reason for changing the regulation: To bring laws governing subsistence taking for customary and traditional uses into compliance with the U.S. laws contained ANILCA Section 804, with traditional use priorities established by U.S. Courts and U.S. Congress, and with priority rights for all game, fish and shellfish species afforded to subsistence users of the State of Alaska and the Kenai Peninsula District. (NTC) Ninilchik Traditional Council (NTC) proposes a significant change to customary and traditional use regulations for shellfish in the Federal subsistence regulations . The current regulations for shellfish do not allow for subsistence taking in the Kenai Peninsula Area of any shellfish species.

Effect of change on fish or shellfish populations: It is anticipated that there will be no overall impact on the populations of shellfish. This is due to the fact that only the priority among user groups is to be redefined. No greater overall take or depletion of each species will result. Only the priorities for user categories will be brought into compliance with current laws and mandates of ANILCA Section 804. (NTC)

None, it will have an affect on the users.(Vanek)

None, it will have impacts on downstream users such as charter boats, sport fishing, and commercial users. (Bahr)

Effect of change on subsistence users: Any resulting changes that might impact subsistence users would all be of a positive nature. The result of the adoption and implementation of these changes would be to finally recognize and enforce the legal rights of all subsistence users to fulfill their customary and traditional use needs for which the named resources have been given a rural subsistence preference under Federal law and definitive judgment of the courts. (NTC)

It will fulfill the mandate and finally give all residents in Ninilchik the right to all subsistence fish and to feed and cloth my family. (Vanek and Bahr)

Communities which have used this resource: All communities along Cook Inlet having traditional and customary use for subsistence purposes (including Ninilchik.) (NTC, Vanek, and Bahr)

Where the resource has been harvested: All species of shellfish made a part of this proposal are harvested from various areas along the coastal inlet waters, lakes and streams of the Cook Inlet and associated waterways. Specific resource harvest areas are more accurately depicted in the recent and comprehensive study titled “1999 ANILCA Subsistence Survey” as conducted and reported by the Ninilchik Traditional Council. (NTC)

In the streams, on the beaches, and in Cook Inlet waters. (Vanel and Bahr)

When the resource has been harvested: True subsistence use and taking has, and is, known to occur at virtually all times the resources is present, in adequate supply and abundance, and when the need is greatest to fulfill the customary and traditional needs of those who are utilizing the resource. Seasonal limits, bag limits and other such limitations or regulations inconsistent with the very nature and purpose of subsistence harvest and customary and traditional uses should not be imposed. With adequate resources to meet all priority subsistence needs being present for virtually all species under consideration, there is simply no constructive reasoning or legal precedence for imposing such limitations. Only the true subsistence needs of the individual user should be a factor limiting the taking of specific species. It is clear the intent of the law in ANILCA Section 804 was to provide for every single subsistence need, at 100% of fulfillment of each specific need, to the maximum extent that the resource availability can provide for. There is no other measure at law or in historical precedence, which can lead to a contrary finding. (NTC)

All year round. (Vanek and Bahr)

Additional Information: Yes, the traditional and Federally-recognized government for the central Kenai Peninsula area and Ninilchik, the Ninilchik Traditional Council, has undertaken long-term, intensive studies and door-to-door, comprehensive surveys, which convincingly support the absolute need for continued priority being given to customary and traditional use needs, adequate designation of harvest and use areas, and seasonal taking priorities.

ANILCA Section 804 is the very law that brought about the recognition of these rights, and resource utilization priorities, for all peoples of this State. It must be upheld. Priorities for resource allocation are legal, are morally correct, and are a fulfillment of the duties and responsibilities of us all, to those who are dependent on the resources for life, livelihood, and for the continuation of their lives in a meaningful, healthy, and respectable manner. Additionally, precedence is well laid out not only through ANILCA Section 804, but also through many recent court applications and understandings of the priority provisions of Federal law in the State of Alaska.

Further, additional studies and research by the U.S. Government Agencies, and even the State of Alaska administration, fully support, and are consistent with the findings of Ninilchik Traditional Council. The time to act is now. (NTC)

The law, Congressional mandates, and agreements between the U.S. and Alaska Natives, plus 9th Circuit Court summary judgment that all residents on the Peninsula are considered rural for subsistence purposes. (Vanek and Bahr)

Proposed by: Ninilchik Traditional Council, Stephen Vanek, and Fred H. Bahr, Ninilchik